

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DANIEL GABINO MARTINEZ,

Defendant.

No. 06cv1146 PK/LFG

ORDER

THIS MATTER came on for consideration of pending motions: (1) Plaintiff's Motion to Join Party Defendant for Purposes of Application for Writ of Garnishment filed August 18, 2010 (Doc. 78); (2) Defendant's Praecipe to Clerk to Correct the Record Nunc Pro Tunc filed August 31, 2010 (Doc. 89), (3) Defendant's Objection to Clerk's Notice of Post Judgment Garnishment and Instructions to Debtor and Writ of Garnishment to JP Morgan Chase Bank and Mandatory Notice of Judicial Notice of Tacit Procuration filed September 17, 2010 (Doc. 93), and Defendant's Objection to Orders in Court Hearing on September 29, 2010, and to "Plaintiff's Response to Defendant's Objections to Clerk's Notice of Post Judgment Garnishment and Instructions to Debtor and Writ of Garnishment to JP Morgan Chase Bank and Mandatory Judicial Notice of Tacit Procuration" filed October 18, 2010 (Doc. 100). Upon consideration thereof, all pending motions, objections and requests are denied

and the government need not respond to Defendant's latest objection (Doc. 100).

During a September 29, 2010, status conference, Mr. Martinez made a variety of objections to the government's renewed effort to collect its judgment through garnishment. When reminded of his non-appearance at prior proceedings, Mr. Martinez complained of lack of adequate notice. He also made several jurisdictional arguments which the court has already rejected. Doc. 16. He also contended that the matter was settled in the District of Arizona.

In an abundance of caution, the court directed the government to hold in abeyance any garnishment proceedings pending resolution of outstanding motions. Mr. Martinez was given thirty days to retain a lawyer to enter an appearance and file an appropriate Fed. R. Civ. P. 60(b) motion. Thereafter, the government filed a response to Mr. Martinez's objections. Doc. 94.

On October 6, 2010, the government filed a notice of satisfaction of the underlying judgment and withdrew the writ of garnishment against JP Morgan Chase. Docs. 97 & 98. Mr. Martinez then filed various pro se objections to the hearing implying that the undersigned should recuse and contending that some fifteen frauds warranted relief from the underlying judgment. Doc. 100. The court's prior and continued rejection of Mr. Martinez's contentions concerning jurisdiction do not furnish a basis for recusal. Liteky v. United States, 510 U.S. 540, 555-56 (1994); Carvalho v. Pugh, 177 F.3d 1177, 1179 (10th Cir. 1999). In light of the satisfaction of the judgment, the stay of garnishment proceedings is no longer needed and will

be vacated. The government's motion to join a party defendant is likewise moot, and the court need not address how the government may garnish the property of Mr. Martinez's spouse for his separate judgment debt. All pending motions, requests and objections that remain should be denied.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED and DECREED that:

(1) The stay of the garnishment proceedings is lifted.


(2) Plaintiff's Motion to Join Party Defendant for Purposes of Application for Writ of Garnishment filed August 18, 2010 (Doc. 78) is denied as moot.

(3) Defendant's Praecipe to Clerk to Correct the Record Nunc Pro Tunc filed August 31, 2010 (Doc. 89), is denied as moot.

(4) Defendant's Objection to Clerk's Notice of Post Judgment Garnishment and Instructions to Debtor and Writ of Garnishment to JP Morgan Chase Bank and Mandatory Notice of Judicial Notice of Tacit Procuration filed September 17, 2010 (Doc. 93) is denied as moot concerning the garnishment and denied with prejudice as to any other issues.

(5) Defendant's Objection to Orders in Court Hearing on September 29, 2010, and to "Plaintiff's Response to Defendant's Objections to Clerk's Notice of Post Judgment Garnishment and Instructions to Debtor and Writ of Garnishment to JP Morgan Chase Bank and Mandatory Judicial Notice of Tacit Procuration" filed October 18, 2010 (Doc. 100) is denied as moot concerning the garnishment and denied with prejudice as to any other issues.

DATED this 27th day of October 2010, at Santa Fe, New Mexico.


United States Circuit Judge
Sitting by Designation